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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 TRACY L. STEWART, } No. CV 14-01747-DSF (DFM)  
12 Petitioner, }  
13 v. } ORDER TO SHOW CAUSE  
14 }  
15 J. McCOMBER, Warden, }  
16 Respondent. }

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18 On or about March 4, 2014, Petitioner Tracy L. Stewart (“Petitioner”)  
19 constructively filed a Petition for Writ of Habeas Corpus by a Person in State  
20 Custody (“Petition”). The Petition appears to be directed to a conviction  
21 sustained by Petitioner on August 29, 1986, in Los Angeles Superior Court, for  
22 which Petitioner was sentenced to life with the possibility of parole to run  
23 consecutively to a sentence of 34 years, 4 months. Petition, Exh. K. Petitioner  
24 raises claims of mental incompetence, ineffective assistance of trial counsel,  
25 ineffective assistance of appellate counsel, and prosecutorial misconduct.

26 Because this action was filed after the President signed into law the  
27 Antiterrorism and Effective Death Penalty Act of 1996 (the “AEDPA”) on  
28 April 24, 1996, it is subject to the AEDPA’s one-year limitation period, as set

1 forth at 28 U.S.C. § 2244(d). See Calderon v. U.S. Dist. Ct. (Beeler), 128 F.3d  
2 1283, 1287 n.3 (9th Cir. 1997), overruled in part on other grounds by Calderon  
3 v. U.S. Dist. Ct. (Kelly), 163 F.3d 530 (9th Cir. 1998) (en banc). 28 U.S.C. §  
4 2244(d) provides:

5 (1) A 1-year period of limitation shall apply to an  
6 application for a writ of habeas corpus by a person in custody  
7 pursuant to the judgment of a State court. The limitation period  
8 shall run from the latest of--

9 (A) the date on which the judgment became final by  
10 conclusion of direct review or the expiration of the time for  
11 seeking such review;

12 (B) the date on which the impediment to filing an  
13 application created by State action in violation of the Constitution  
14 or laws of the United States is removed, if the applicant was  
15 prevented from filing by such State action;

16 (C) the date on which the constitutional right  
17 asserted was initially recognized by the Supreme Court, if the right  
18 has been newly recognized by the Supreme Court and made  
19 retroactively applicable to cases on collateral review; or

20 (D) the date on which the factual predicate of the  
21 claim or claims presented could have been discovered through the  
22 exercise of due diligence.

23 In his Petition, Petitioner lists a Petition for Review to the California  
24 Supreme Court which was denied on March 22, 1989. Petition at 2 (¶ 9(e)(3)).  
25 Thus, for purposes of 28 U.S.C. § 2244(d)(1)(A), Petitioner's judgment of  
26 conviction "became final by conclusion of direct review or the expiration of the  
27 time for seeking such review" on or about June 20, 1989, when the 90-day  
28 period for Petitioner to petition the United States Supreme Court for a writ of

1 certiorari expired. See Bowen v. Roe, 188 F.3d 1157, 1158-59 (9th Cir. 1999);  
2 Beeler, 128 F.3d at 1286 n.2. Thus, if measured from “the date on which the  
3 judgment became final by conclusion of direct review or the expiration of the  
4 time for seeking such review,” Petitioner’s last day to file his federal habeas  
5 petition was June 20, 1990. See Patterson v. Stewart, 251 F.3d 1243, 1246 (9th  
6 Cir. 2001); Beeler, 128 F.3d at 1287-88.

7 From the face of the Petition, it does not appear that Petitioner has any  
8 basis for contending that he is entitled to a later trigger date under §  
9 2244(d)(1)(B). Nor does it appear that Petitioner has any basis for contending  
10 that he is entitled to a later trigger date under § 2244(d)(1)(C) because neither  
11 of the claims alleged in the Petition appears to be based on a federal  
12 constitutional right that was initially recognized by the United States Supreme  
13 Court subsequent to the date his conviction became final and that has been  
14 made retroactively applicable to cases on collateral review. Finally, it does not  
15 appear that Petitioner has any basis for contending that he is entitled to a later  
16 trigger date under § 2244(d)(1)(D) since it appears from the face of the Petition  
17 that Petitioner was aware of the factual predicate of his claims as of the time  
18 when his trial and appellate counsel took (or failed to take) the actions of  
19 which Petitioner complains in his Petition or when the trial judge  
20 recommended a psychological evaluation at sentencing. See Hasan v. Galaza,  
21 254 F.3d 1150, 1154 n.3 (9th Cir. 2001) (statute of limitations begins to run  
22 when a prisoner “knows (or through diligence could discover) the important  
23 facts, not when the prisoner recognizes their legal significance”).

24 Thus, unless a basis for tolling the statute existed, Petitioner’s last day to  
25 file his federal habeas petition was June 20, 1990, or almost a quarter-century  
26 ago. See Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). No basis  
27 for statutory tolling under § 2244(d)(2) appears to exist here. The only state  
28 collateral challenges filed by Petitioner subsequent to the date his judgment of

1 conviction became final are habeas petitions that Petitioner filed with the Los  
2 Angeles County Superior Court, California Court of Appeal, and California  
3 Supreme Court in October 2012, February 2013, and May 2013, respectively.  
4 See Petition ¶¶ 28-32. It does not appear to the Court that Petitioner would be  
5 entitled to any statutory tolling for any of those state habeas petitions because  
6 they were not filed until 2012, which was over two decades after Petitioner's  
7 federal filing deadline already had lapsed. See, e.g., Ferguson v. Palmateer,  
8 321 F.3d 820, 823 (9th Cir. 2003) (holding that § 2244(d) "does not permit the  
9 reinitiation of the limitations period that has ended before the state petition  
10 was filed," even if the state petition was timely filed); Jiminez v. Rice, 276 F.3d  
11 478, 482 (9th Cir. 2001); Wixom v. Washington, 264 F.3d 894, 898-99 (9th  
12 Cir. 2001).

13 The Supreme Court has held that the AEDPA's one-year limitation  
14 period also is subject to equitable tolling in appropriate cases. See Holland v.  
15 Florida, 560 U.S. 605, 130 S. Ct. 2548, 2560 (2010). However, a habeas  
16 petitioner is entitled to equitable tolling only if he shows (1) that he has been  
17 pursuing his rights diligently; and (2) that "some extraordinary circumstance  
18 stood in his way." See Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); see also  
19 Holland, 130 S. Ct. at 2562. Here, although Petitioner briefly references that he  
20 was impeded by lockdowns, prison transfers, lack of access to law library, and  
21 other limitations, such a showing falls well short of demonstrating either  
22 diligence or extraordinary circumstances. "In general, the difficulties attendant  
23 on prison life, such as . . . lockdowns, restricted access to the law library, and  
24 an inability to secure court documents, do not by themselves qualify as  
25 extraordinary circumstances." Haggerty v. Diaz, No. 12-2219, 2013 WL  
26 4718171, at \*6 (C.D. Cal. 2013) (citing Corrigan v. Barbary, 371 F. Supp. 2d  
27 325, 330 (W.D. N.Y. 2005)); see also Atkins v. Harris, No. 98-3188, 1999 WL  
28 13719, at \*2 (N.D. Cal. 1999) ("Petitioner's allegations of difficulty in gaining

1 library access, prison lockdowns, his lack of legal training . . . fail to meet the  
2 requisite extraordinary circumstances . . . . Prisoners familiar with the routine  
3 restrictions of prison life must take such matters into account when calculating  
4 when to file a federal petition.”).

5 The Ninth Circuit has held that the district court has the authority to  
6 raise the statute of limitations issue sua sponte when untimeliness is obvious  
7 on the face of the petition and to summarily dismiss a petition on that ground  
8 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United  
9 States District Courts, so long as the court “provides the petitioner with  
10 adequate notice and an opportunity to respond.” See Nardi v. Stewart, 354  
11 F.3d 1134, 1141 (9th Cir. 2004); Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th  
12 Cir. 2001).

13 IT THEREFORE IS ORDERED that, on or before April 18, 2014,  
14 Petitioner show cause in writing, if any he has, why the Court should not  
15 recommend that this action be summarily dismissed with prejudice on the  
16 ground of untimeliness.

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18 Dated: March 14, 2014



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DOUGLAS F. McCORMICK  
United States Magistrate Judge